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HAROLD B. WILLEY,

IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. 748

OUNER ANDERSON PATTERSON, *Petitioner*

vs.

ROSETTA ANDERSON, INDIVIDUALLY AND AS ADMINISTRATRIX OF THE ESTATE OF PHILIP ANDERSON, DECEASED, *Respondent*

PETITION FOR WRIT OF CERTIORARI

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Printed by Law Reporter Printing Co., 518 5th St., Wash., D. C.

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STATEMENT OF THE MATTER INVOLVED

In the proceedings in the courts below, the Circuit Court of Arlington County, Va. and the Supreme Court of Appeals of Virginia, the petitioner has sought to establish an interest in the personal and real estate of Philip Anderson, deceased, as his legitimate daughter. These proceedings consist of two actions initiated by the petitioner against the respondent, individually and as administratrix of the estate of Philip Anderson, deceased. One is an action at law seeking damages for the breach of respondent's duty to file and prosecute an action for wrongful death for the benefit of the plaintiff and for wrongfully compromising and settling the claim for damages for the wrongful death at an inadequate sum and retaining the proceeds of the settlement. The second, instituted upon the termination of the aforementioned in a judgment for the petitioner, consists of a bill in equity, as amended, filed by the petitioner,

alleging her adjudication in the action at law as the legitimate daughter of the decedent, and praying: that the heirs of the decedent be determined, that the respondent be required to account to and deliver to the petitioner her share of the decedent's personal estate, and that the petitioner's interest in the decedent's real estate be decreed. The respondent's answer alleged that she was lawfully married to the decedent, subsequent to the petitioner's birth and at the time of the decedent's death, and denied that the matter of the petitioner's legitimacy was *res adjudicata*. Her cross bill attacked the judgment in the action at law claiming it was not a valid personal judgment against her and that it had been procured through fraud and perjury. The court below affirmed the judgment of the trial court, which had dismissed the petitioner's bill, adjudged her to have no interest in the decedent's real property, and held that the judgment in the law action was not a valid personal judgment against the respondent and thus no bar to relitigation of the petitioner's legitimacy.

JURISDICTION

The jurisdiction of this Court is invoked under Title 28, U. S. Code, Section 1257 (3), as amended by 62 Stat. 929 (1948). The judgment sought to be reviewed was entered by the Supreme Court of Appeals of Virginia on January 26, 1953. This petition is presented April 27, 1953.

Petitioner claims that by the said decree of the Supreme Court of Appeals of Virginia she has been deprived of property without due process of law in contravention of the 14th Amendment to the Constitution of the United States. In the action at law, in which the identical persons were parties in the identical capacities in which they appeared in the equity action, the legitimacy of the petitioner was an issue adjudicated in her favor. Notwithstanding this prior adjudication asserted in the equity action, the Supreme Court of Appeals of Virginia, noting that a

verdict and judgment based on instructions referring to the respondent as administratrix should have been against the respondent as administratrix, held the judgment to be a personal judgment but invalid and not *res adjudicata* on the grounds the count failed to state a cause of action. Petitioner does not claim that any statutes of Virginia applicable to the case are invalid but that the manner in which the court applied the statutes to the specific facts presented constitutes a denial of property without substantive due process of law. *Fiske* v. *Kansas*, 274 U. S. 380, 387; *Thomas* v. *Collins*, 323 U. S. 516, 532-533; *Marsh* v. *Alabama*, 326 U. S. 501, 504, 509. The statutes involved are Title 8-222, 8-634, and 8-636 of the 1950 Code of Virginia [1].

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[1] *Title 8-222.* When faulty count disregarded; when verdict good.—When there are several counts in a declaration, one of more of which are faulty, the defendant may demur to the faulty count or counts, or move the court to instruct the jury to disregard them. If he does neither, and entire damages be found, judgment shall be entered against the defendant for the damages found, if any count be good, although others be faulty, unless the court can plainly see that the verdict could not be found on the good count. If he demurs to the faulty count, or moves the court to instruct the jury to disregard it, and his demurrer or motion is overruled, and entire damages be found, and it cannot be seen on which count the verdict was founded, if the jury has been dismissed the verdict shall be set aside, but if it is manifest that the verdict could not have been found on the bad count, the verdict shall be allowed to stand. If the jury have not been dismissed, the court shall send them back with instructions to designate on which count of the declaration the verdict is found. (Code 1919, Sec. 6258.)

Title 8-634. How and when to be brought.—Every such action shall be brought by and in the name of the personal representative of such deceased person and within one year after his or her death, but if any such action is brought within such period of one year after such person's death, but for any cause abates or is dismissed without determining the merits of such action, the time such action is pending shall not be counted as any part of such period of one year and another suit may be brought within the remaining period of such one year as if such former suit had not been instituted. (Code 1919, Sec. 5787; 1920, p. 26; 1942, p. 337.)

Title 8-636. Amount and distribution of damages.—The jury in any such action may award such damages as to it may seem fair and just, not exceeding $15,000, and may direct in what proportions they shall

QUESTION PRESENTED

Whether the Supreme Court of Appeals for Virginia, in affirming the judgment of the Circuit Court of Arlington County, Virginia, has deprived the petitioner of property without due process of law, in violation of the 14th Amendment to the Constitution of the United States.

REASONS RELIED ON FOR THE WRIT

The court below held that no cause of action was stated in the action at law for damages, for the reasons that petitioner's mother was a necessary party to the action (though she had remarried and in the equity action disclaimed any interest in the estate of the decedent); that because of this and since the amount of damages to be apportioned between the lawful widow and heirs rested entirely within the discretion of the jury the amount of damages, if any, which the petitioner might recover was incapable of proof. Petitioner claims a cause of action was stated in her action at law and the matter of her legitimacy decided therein was *res judicata* in the equity action; that her mother was not a necessary party to the action, as the Supreme Court of Virginia held, since she was estopped by a subsequent marriage from asserting any claim as widow to any part of the damages recovered. All the parties in interest,—there being only two, the petitioner and the respondent,—were before the court and the jury could have decided—and did decide—the amount of the proceeds recovered as a result of the decedent's wrongful death each one was entitled to. As a result of the court's opinion

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be distributed to the surviving widow or husband and children and grandchildren of the deceased, or if there be none such, then to the parents, brothers and sisters of the deceased. Nothing shall be apportioned to the parents, brothers and sisters of the deceased if there be a surviving widow or husband, children or grandchildren, but between members of the same class the jury shall have absolute discretion as to who shall receive the whole or any part of the recovery. (Code 1919, Sec. 5787; 1920, p. 27; 1942, p. 337.)

the petitioner stands adjudged an illegitimate daughter of the decedent and has been deprived of any interest in his estate. Although this Court is disposed to accept the construction which the lower court places on a state statute it need not yield to that disposition when the proceedings under the statute and enforcement thereof are in violation of the Federal Constitution. *Yu Cong Eng* v. *Trinidad,* 271 U. S. 500; *Ward and Gow* v. *Kriasky,* 259 U. S. 503; *Yick Wo* v. *Hopkins,* 118 U. S. 356.

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BRIEF FOR ROSETTA ANDERSON, ET AL, IN OPPOSITION

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OPINION BELOW

The opinion of the Supreme Court of Appeals of Virginia is reported at 194 Virginia 557 (not published as yet.)

JURISDICTION

The judgment of the Supreme Court of Appeals of Virginia was entered on the 26th day of January, 1953. No Petition for re-hearing was ever filed. The jurisdiction of this Court is invoked under 28 U. S. C. Section 1257 (3) as amended by 62 stat. 929 (1948). (This section of the Code was re-enacted in 1948 but not amended).

No Federal question was raised in this case in

the lower Court or the Supreme Court of Appeals of Virginia, and this Court is without jurisdiction in the premises. Cleveland & Pittsburgh Railroad Company v. Cleveland, 235 US 50; Hiawassee River Power Company v. Carolina-Tennessee Power Company, 252 US 341.

CONCLUSION

The decision below is correct, and presents no conflict of decisions, no Federal question, and no question of importance. It is respectfully submitted that the Petition for a writ of certiorari should be denied.

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